

IN THE COURT OF CRIMINAL APPEALS OF TENNESSEE
AT NASHVILLE

Assigned on Briefs February 14, 2006

STATE OF TENNESSEE v. TIAWO DAVIS

Direct Appeal from the Circuit Court for Williamson County
No. I-103-041-B Russ Heldman, Judge

No. M2005-00586-CCA-R3-CD - Filed September 27, 2006

The defendant, Tiawo Davis, appeals his jury convictions for aggravated robbery (Class B felony), aggravated burglary (Class C felony), and aggravated assault (Class C felony). The defendant's sole issue on appeal is the sufficiency of the evidence to support the convictions. After review, we conclude that the convictions were sufficiently supported by the evidence, and we affirm the convictions.

Tenn. R. App. P. 3 Appeal as of Right; Judgments of the Circuit Court Affirmed

JOHN EVERETT WILLIAMS, J., delivered the opinion of the court, in which DAVID H. WELLES and THOMAS T. WOODALL, JJ., joined.

Dana C. McLendon, III, Franklin, Tennessee (on appeal), and Diane G. Livingston, Franklin, Tennessee (at trial), for the appellant, Tiawo Davis.

Paul G. Summers, Attorney General and Reporter; Blind Akrawi, Assistant Attorney General; Ronald L. Davis, District Attorney General; and Derek K. Smith, Assistant District Attorney General, for the appellee, State of Tennessee.

OPINION

This case concerns a home invasion of the residence of the victims, Fred Curl and LaTonya Curry, on November 7, 2002. The presentment contained three counts: aggravated burglary, aggravated robbery, and aggravated assault. The defendant was charged along with Todd Scruggs in all three counts. Antonio Gosey and Devario Johnson were charged in the first two counts. Gosey was granted a judgment of acquittal after the State's proof. Johnson was acquitted, and the jury was unable to reach a verdict on Scruggs. Thus, the defendant was the only one of the four co-defendants convicted.

Factual History

Frederick Curl, Sr., the father of the victim, Fred Curl, testified about meeting a man from California who purchased a 1950 Chevrolet from Mr. Curl, Sr. The buyer wanted the car transported to California. Mr. Curl, Sr., and his son, Fred, took the car to California. While there, the buyer/benefactor gave Fred Curl a Volvo and \$5000 in cash. In addition, the buyer paid for LaTonya Curry to fly out and accompany Fred Curl back to Tennessee.

Fred Curl, one of the victims herein, reiterated the account of receiving the Volvo and the \$5000 while in California. He stated that he and LaTonya Curry spent approximately \$3000 of the money during the return trip to Tennessee. They arrived home in Franklin on November 7, 2002. Fred Curl invited several friends to his duplex residence that evening. The defendant was not among the party guests, but the other co-defendants were present.

Later that evening, after all guests had departed, the defendant and Scruggs entered the residence through the victims' back door. Both men were armed with handguns. Scruggs was "all masked up," but Curl stated that he recognized Scruggs' voice. The defendant was not wearing a mask. Fred Curl had known the defendant prior to this incident and recognized him. The two men demanded money. They told Curl to remove his clothing. The defendant brought Ms. Curry in from a bedroom and told her to get on the floor. In an attempt to cause a delay, Curl told the two invaders that the money was in his car. The defendant escorted Curl outside to the car. Eventually, Curl surrendered his wallet to the defendant, and the defendant took out the money. The defendant and Curl went back inside, and the defendant informed Scruggs that he had the money. The defendant, in leaving the residence, told Curl "this ain't police business, this is between us." In addition to the approximately \$1970, the two men took Curl's car keys and cell phone. Curl stated that he later identified the defendant in a photographic lineup as one of the robbers, although he had already told the police of the defendant's involvement.

LaTonya Curry testified that she did not know the defendant prior to the events of November 7, 2002. She had known all the other co-defendants. She stated that the defendant woke her with a gun in her face. Ms. Curry identified the defendant in the courtroom as one of the two home invaders. She had also identified the defendant in a photographic lineup as the perpetrator. Ms. Curry stated that the defendant took Mr. Curl out to the car to search for the money while Scruggs stayed with her. Although Scruggs' face was covered, she said she recognized his voice.

After hearing this testimony and other evidence, the jury returned guilty verdicts as to the defendant for aggravated burglary, aggravated robbery, and aggravated assault.

Analysis

The defendant's sole issue on appeal is a challenge to the sufficiency of the evidence supporting his convictions. An appellate court must reject a convicted defendant's challenge to the sufficiency of the evidence if, after considering the evidence in a light most favorable to the

prosecution, it determines that any rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt. See Jackson v. Virginia, 443 U.S. 307, 319, 99 S. Ct. 2781, 2789 (1979); State v. Hall, 8 S.W.3d 593, 599 (Tenn. 1999). We do not reweigh the evidence but presume that the jury has resolved all conflicts in the testimony and drawn all reasonable inferences from the evidence in favor of the State. See State v. Sheffield, 676 S.W.2d 542, 547 (Tenn. 1984). “Questions concerning the credibility of witnesses, the weight and value to be given the evidence, as well as all factual issues raised by the evidence are resolved by the trier of fact.” State v. Bland, 958 S.W.2d 651, 659 (Tenn. 1997).

We note that the technical record contains three Negotiated Plea Agreements whereby the defendant purports to enter guilty pleas as to each of the convicted offenses. We have, in light of the judgments of conviction, interpreted these as being an agreed sentence rather than guilty pleas.

Robbery is the intentional or knowing theft of property from a person by violence or putting the person in fear. T.C.A. § 39-14-401. Robbery becomes aggravated robbery when it is accomplished with a deadly weapon or where the victim suffers serious bodily injury.

The evidence, in the light most favorable to the prosecution, was that the defendant entered Mr. Curl’s and Ms. Curry’s residence armed with a handgun. The defendant demanded and eventually obtained money from Mr. Curl. The defendant placed the gun at Ms. Curry’s head. Both victims testified that they were fearful because of the defendant’s actions. Mr. Curl said the fact that the defendant was not masked and was known by Mr. Curl was of especial concern to him. When the victims reported the incident, Mr. Curl identified the defendant to the police as a perpetrator. He later identified the defendant in a photographic lineup. Ms. Curry did not know the defendant previously but identified him in the photographic lineup and during trial.

Burglary is committed by a person who enters a building and commits or attempts to commit a felony. T.C.A. § 39-14-402. A burglary is aggravated if the building entered is a habitation. T.C.A. § 39-14-403. A habitation is any structure designed or adapted for overnight accommodation of persons. T.C.A. § 39-14-401.

An assault is intentionally or knowingly causing another to reasonably fear imminent bodily injury. T.C.A. § 39-13-101(a)(2). The use or display of a deadly weapon in committing the assault constitutes aggravated assault. T.C.A. § 39-13-102(a)(1)(B).

The defendant, in his appellate brief, attacks the credibility of the victims and characterizes their testimony as improbable and inconsistent with reason. However, we are precluded from substituting our view of a witness's credibility. Those issues were resolved by the trier of fact. There was sufficient evidence, if accredited by the jury, to convict the defendant on all counts. The aggravated assault charge concerned the use of a deadly weapon in the demands made of Ms. Curry. Ms. Curry stated that she was "scared and nervous" as a result of the defendant's actions. Given the acceptance by the jury of the victims' testimony, there is abundant evidence to support the convictions. Accordingly, we affirm the convictions.

JOHN EVERETT WILLIAMS, JUDGE